IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mool Singh & ors. Versus State of Rajasthan.

S.B. Criminal Revision No. 326/2006 against the judgment and order dated 7-4-2006 passed by the Additional Sessions Judge, Gulabpura, district Bhilwara, in Criminal Appeal No.19/2004.

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Date of Order: May 22, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR.

Mr. Rakesh Arora, for the petitioners.
Mr. JPS Chaudhary, Public Prosecutor for the State.

BY THE COURT:

Notice for final disposal is accepted by the learned Public Prosecutor. With the consent of the learned counsel for the parties, the revision petition is finally heard and decided at the admission stage.

The petitioners Mool Singh, Ladhu Singh and Harji Singh were convicted for the offences under Sections 148, 447, 325/149, 323/149, 324/149 IPC and petitioner Mithu Singh was convicted for the offences under Sections 148, 447, 325/149, 323/149, 324 IPC by the Judicial Magistrate, First Class, Asind, district Bhilwara (for short, "the trial Court" hereinafter) vide judgment and order dated 30-4-2004 passed in Criminal Case

No. 345/1995 and each of the petitioners Mool Singh, Ladu Singh and Harji Singh were sentenced to simple imprisonment for three months and a fine of Rs.100/- and in default of payment of fine further to undergo 15 days imprisonment for the offence under Section 148 IPC; one month's simple imprisonment for the offence under Section 447 IPC; one year's simple imprisonment and a fine of Rs.200/-, in default of payment of fine further to undergo one month's imprisonment for the offence under Section 325/149 IPC; one month's simple imprisonment and a fine of Rs.100/- and in default of payment of fine further to undergo 15 days imprisonment for the offence under Section 323/149 IPC; and six months simple imprisonment and a fine of Rs.200/- and in default of payment of fine further to undergo one month's imprisonment for the offence under Section 324/149 IPC. Petitioner Mithu Singh was sentenced to three months' simple imprisonment and a fine of Rs.100/-, in default of payment of fine further to undergo 15 days imprisonment for the offence under Section 148 IPC; one month's simple imprisonment for the offence under Section 447 IPC; one year's simple imprisonment and a fine of Rs.200/-, in default of payment of fine further to undergo one month's imprisonment for the offence under Section 325/149 IPC; one month's simple imprisonment and a fine of Rs.100/-, in default of payment of fine further to undergo 15 days imprisonment for

the offence under Section 323/149 IPC; and six months' simple imprisonment and a fine of Rs.200/-, in default of payment of fine further to undergo one month's imprisonment for the offence under Section 324 IPC. All the substantive sentences were directed to run concurrently. Against the judgment and order dated 30-4-2004 passed by the trial Court convicting and sentencing the petitioners, the petitioners filed appeal before the Additional Sessions Judge, Gulabpura, district Bhilwara (for short, "the Appellate Court" hereinafter) and the Appellate Court, vide judgment and order impugned dated 7-4-2006, dismissed the appeal. Aggrieved by the judgments and orders impugned, the petitioners have filed the instant criminal revision.

I have heard learned counsel for the petitioners and the Public Prosecutor appearing for the State.

At the very out set, learned counsel for the petitioners submits that the petitioners do not challenge their conviction; however, learned counsel for the petitioners has confined the arguments only on the point of sentence. Learned counsel for the petitioners submits that both the courts below fell in error in not considering the case of the petitioners under Section 360 Cr.P.C. or under the Probation of Offenders Act, 1958. Learned counsel submits that no reasons, much less special reasons for not considering the case of the petitioners under Section 360 Cr.P.C. has been assigned either by the trial

Court or by the Appellate Court, which, according to the learned counsel, is mandatory in nature in view of the provisions of Section 361 Cr.P.C.

I have carefully gone through the judgments and orders passed by the courts below. There are concurrent findings of both the Courts below holding the petitioners guilty of the offences noticed above. The occurrence took place on 22.7.1995. The petitioners are in custody since 7-4-2006. From the perusal of the judgments and orders of the Courts below, it no where appears that the petitioners were previously convicts. There is no adverse antecedents to their credit on record and the aforesaid offences appear to be their first offences.

Section 361 Cr.P.C. provides special reasons to be recorded in certain cases and reads as under:-

> "361. Special reasons to be recorded in certain cases.- Where in any case, the Court could have dealt with.-
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> (a) an accused person under Section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or
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> (b) a youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders;
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> but has not done so, it shall record in its judgment the special reason for not having done so."

Thus, from the bare reading of Section 361 Cr.P.C., it makes more than clear that it is mandatory duty cast on the

Court to record in its judgment special reason for not granting the benefit of Section 360 Cr.P.C. where it could have dealt with the accused under this Section.

In Chandreshwar Sharma Vs. State of Bihar, (2000) 9 SCC 245, the Hon'ble Supreme Court held that mandatory duty is cast on the Court to record in its judgment specific reasons for not granting benefit of Section 360 where it could have dealt with the accused under that Section.

Having regard to the peculiar facts and circumstances of the case and the facts that the occurrence took place on 22-7-1995; the petitioners have undergone the imprisonment for 50 days; there are no adverse antecedents of the petitioners on record, and they have been facing protracted trial, appeal and revision and no reason, much less special reason, has been recorded by the Courts below for declining to release the petitioners under Section 360 Cr.P.C. or under the Probation of Offenders Act, 1958, in my view, the ends of justice would be met if the petitioners are released on probation of good conduct.

Consequently, the revision petition is partly allowed. While maintaining the conviction of the petitioners Mool Singh, Ladu Singh and Harji Singh for the offences under Sections 148, 447, 325/149, 324/149 IPC and petitioner Mithu Singh for the offences under Sections 148, 447, 325/149, 323/149 and 324

IPC, as also the sentence of fine, instead of sentencing the petitioners at once to any imprisonment, it is directed that the petitioners be released on probation under Section 4 (i) of the Probation of Offenders Act, 1958 provided each of them furnishes a person bond in the sum of Rs.10,000/- along with one surety in the like amount each, to the satisfaction of the trial court to be of good behaviour and maintain peace and tranquility and shall not repeat the offence for a period of two years and shall appear and receive the sentence when called upon to do so during such period. Each of the petitioners shall deposit a sum of Rs. 2000/- each as compensation under Section 5 of the Probation of Offenders Act, 1958, totaling Rs.8000/-, and on depositing the said amount of fine, a sum of Rs.5000/- be paid to injured PW 4 Smt. Methi and Rs.1000/- be paid to each of the injured PW 3 Sukhdeo, PW 7 Dhanna Singh and PW 10 Khuman Singh. The petitioners are in jail. On furnishing the bail bonds and depositing the amount of fine and compensation, they be set at liberty forthwith, if not required in any other case. The application for bail/suspension of sentence being No.97/2006 stands disposed of.

(H.R. PANWAR), J.

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